

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

FM Broadcast Station KNEC
Arnold Broadcasting Company, Inc.
Sterling, Colorado 80751

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NAL/Acct. No. 915DV0001
Case No. 99DV446

FORFEITURE ORDER

Adopted: February 7, 1999**Released: February 9, 2000**

By the Chief, Enforcement Bureau:

1. This order imposes a forfeiture¹ against Arnold Broadcasting Company, Inc. ("Arnold Broadcasting") in the amount of \$16,000 pursuant to Section 503(b) of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules ("the Rules"), 47 C.F.R. § 1.80, for willful violations of Sections 11.35, 11.61, 17.4, 73.1225, 73.1350, 73.1820, and 73.1870 of the Rules, 47 C.F.R. §§ 11.35, 11.61, 17.4, 73.1225, 73.1350, 73.1820, and 73.1870. These violations include failure to comply with the Rules for Emergency Alert System ("EAS") equipment and antenna structure registration, as well as numerous violations of the Rules for broadcast stations.

BACKGROUND

2. On May 19, 1999, agents of the Commission's Denver Field Office conducted a routine inspection of FM broadcast station KNEC. The agents found numerous violations of the Rules, including: (a) failure to install and maintain operable EAS equipment (47 C.F.R. § 11.35(a)); (b) failure to conduct EAS tests and activations or to maintain logs of tests or activations (47 C.F.R. §§ 11.54, 11.55, and 11.61); (c) failure to post the antenna structure registration number at the base of the antenna tower (47 C.F.R. § 17.4(g)); (d) failure to designate and post the designation of a chief operator for the station (47 C.F.R. § 73.1870, and 73.1350(b)); (e) failure to have a chief operator review the station's records weekly and verify in the station log that KNEC operated in accordance with the Rules and its authorization (47 C.F.R. § 73.1870(c)(3)); and (f) failure to make the station's equipment performance measurements, written designation of chief operator, technical records, or EAS logs available to FCC representatives upon request (47 C.F.R. §§ 73.1225(c), 73.1820(a)). In addition, KNEC's staff was unable to demonstrate that the transmitter control system in place would allow station personnel to control the transmitter manually or via telephone line, and admitted that the only transmitter control for the station was located at a distance that would not allow station staff to take the transmitter off the air within three minutes, as required under the Rules. See 47 C.F.R. § 73.1350(a) and (b)(2). Based on these findings, the Denver Field Office issued a Notice of Apparent Liability for monetary forfeiture ("NAL") in the amount of \$16,000 to Arnold Broadcasting on June 7, 1999.

¹ Although Arnold Broadcasting submitted a timely response to the June 7, 1999 NAL, the former Compliance and Information Bureau did not actually receive that response until August 4, 1999. A Forfeiture Order was adopted on July 30, 1999 in the mistaken belief that Arnold Broadcasting was in default. The default Forfeiture Order was set aside on August 5, 1999. The current Forfeiture Order addresses the issues raised in Arnold Broadcasting's response to the NAL.

3. In response to the NAL, Arnold Broadcasting contends: (1) that the station had been on the air less than a month at the time of the inspection and the staff was “still in the learning mode with the new equipment and a totally new product”; (2) that all violations save the installation of the EAS equipment were immediately rectified; (3) that the EAS equipment was not in place due to “shipping problems beyond [KNEC’s] control” but would be installed as soon as it arrived; (4) that the station operates according to automatic transmitter rules, and the transmitter can be shut down within three minutes as required by shutting the audio off; and (5) that the violations were not willful but due to “oversight, overzealousness and excitement” on the part of KNEC’s staff. Arnold Broadcasting requests that the forfeiture be waived “in light of the circumstances and the immediate correction of the cited violations,” except for the installation of EAS equipment.

DISCUSSION

4. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. *See* 47 U.S.C. § 503(b)(2)(D); *see also The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407 (released December 28, 1999) (“*Forfeiture Policy Statement*”). Arnold Broadcasting has not presented any mitigating evidence that would warrant reduction or waiver of the forfeiture.

5. “Licensees are expected to know and comply with the Commission’s rules, and will not be excused for violations thereof, absent clear mitigating circumstances.” *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970). Although KNEC may have been operating for less than a month at the time of the inspection, the station’s staff and owners were not neophyte broadcasters, unfamiliar with the Rules. The NAL notes that the principal owner of Arnold Broadcasting has been active in the broadcast industry for 35 years, and has previously served as a local area EAS chairman. In addition, the response to the NAL admits that all of KNEC’s staff members are “seasoned broadcasters.” And though most of the violations may have been rectified promptly after the inspection, remedial action to correct a violation, although commendable, will not nullify a forfeiture penalty. *See Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1993). With respect to the remote transmitter control issue, although it now appears that some remote control system for the transmitter may be in place, it is unclear from the response whether KNEC’s studio staff is able to determine the technical parameters of the transmitter, and thus know when it is necessary to turn the transmitter off.

6. Finally, Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which also applies to Section 503(b) of the Act, provides: “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Based on the record before us, it is clear that these violations were not caused by accident or mistake, and were therefore willful violations.

ORDERING CLAUSES

7. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80 of the Rules, 47 C.F.R. § 1.80, Arnold Broadcasting Company, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$16,000 for willful violations of Sections 11.35, 11.61, 17.4, 73.1225, 73.1350, 73.1820, and 73.1870 of the Rules.

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80(f) of the Rules, Arnold Broadcasting Company, Inc. shall, within thirty (30) days of the release of this Forfeiture Order, pay the full amount of the forfeiture. Forfeitures shall be paid by check, credit card, or money order payable to the Federal Communications Commission.² The remittance should be marked "NAL/Acct. No. 915DV0001" and mailed to the following address:

Federal Communications Commission
Post Office Box 73482
Chicago, IL 60673-7482

Petitions for reconsideration pursuant to Section 1.106 of the Rules, 47 C.F.R. § 1.106, or applications for review pursuant to Section 1.115 of the Rules, 47 C.F.R. § 1.115, should be sent to:

Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
ATTN: Technical & Public Safety Division
Enforcement Bureau

Forfeiture penalties not paid within 30 days will be referred to the U.S. Attorney for recovery in a civil suit. *See* 47 U.S.C. § 504(a).

9. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent certified mail, return receipt requested, to Arnold Broadcasting Company, Inc., P.O. Box 830, 803 West Main, Sterling, Colorado 80751.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

² Requests for payment under installment plans should be mailed to: Chief, Credit & Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Rules, 47 C.F.R. § 1.1914. Contact Chief, Credit & Debt Management Center, at (202) 418-1995, for more information on payments by credit card.